IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL NO 1776 of 1999
with
CIVIL APPLICATION NO 4908 of 2000
in
SPECIAL CIVIL APPLICATION NO 1000 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VISHVANATH HARISHANKER VYAS

Versus

STATE OF GUJARAT

Appearance:
1. LETTERS PATENT APPEAL No. 1776 of 1999
MR GM JOSHI for Appellant No.
MR PANCHOLI, A.G.P. for Respondent No. 1-4

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE A.L.DAVE

Date of decision: 01/05/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. ADMIT.
Learned A.G.P. Shri Pancholi, who appeared in Application for condonation of delay for the respondents was directed to accept the Notice.

2. By consent of the learned Counsel for the parties the matter is heard and disposed of today by this Judgment.

3. Against the order dated 20.10.1999 passed by the learned Single of this Court dismissing the Special Civil Application No.1000 of 1997 on merit, in absence of the Counsel for the appellant - petitioner, the appellant - petitioner has filed this present Letters Patent Appeal.

4. Learned Counsel Shri Joshi submitted that if the learned Single Judge had waited for the Counsel for the appellant then he would have pointed out to the learned Single Judge that the revocation order was part of the record and the legality of the said order of revocation was challenged. He submitted that in the absence of the learned Counsel for the appellant - petitioner the learned Single Judge ought not to have decided the matter on merit, that has caused great prejudice to the appellant - petitioner. He frankly conceded that it was unfortunate that the learned Counsel for the appellant petitioner had not remained present before the learned Single Judge at the time of hearing of the writ petition, but in that case the learned Single Judge could have dismissed the matter for default instead of deciding the petition on merit.

5. It is clear from the order of the learned Single Judge itself that in absence of the learned Counsel for the appellant the matter came to be decided on merit.

6. In view of the above, learned A.G.P. was hardly in a position to support the order of the learned Single Judge dismissing the writ petition of the appellant - petitioner.

7. In view of the above discussion, this Letters Patent Appeal si allowed and without going into the merits, legality and validity of the order dated 20.10.1999 passed by the learned Single Judge, in Special Civil Application No.1000 of 1997 the same is hereby quashed and set aside only on the ground that the learned Single Judge decided the writ petition on merit in absence of the learned Counsel of the petitioner. The

main writ petition is now remanded to the learned Single Judge with a request to decide the same in accordance with law. The Appeal is accordingly allowed with no order as to costs.

Civil Application No.4908 of 2000 does not survive in view of the order passed in the main Appeal.

(B.J.Shethna, J.)

Date : May 01, 2003

(A. L. Dave, J.)

sas